

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5536 OF 2023

Sunita Manoj Mistry	... Petitioner
V/s.	
Manoj Mohanlal Mistry	... Respondent

**WITH
INTERIM APPLICATION NO.7757 OF 2023
IN
WRIT PETITION NO.5536 OF 2023**

Mahesh Mohanlal Suthar	... Applicant
<i>In the matter of</i>	
Sunita Manoj Mistry	... Petitioner
V/s.	
Manoj Mohanlal Mistry	... Respondents

Mr. Rajeev Patil, Senior Advocate with Ms. Preeti Gada
for the petitioner.

Mr. R.T. Lalwani with Mr. J.K. Shah with Mr. Omkar
Sawant with Ms. Pooja Shah i/by R.J. Law for the
applicant.

***Ms. Firoza Daruwala i/by Ms. Nerissa Almeida
for the respondent.***

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 15, 2023

PC.:

INTERIM APPLICATION NO.7757 OF 2023

1. The application is filed by erstwhile respondent No.2 to
implead himself in the present petition. According to him, the

impugned order affects his rights as the Family Court under Clause 2 of order dated 8th March 2023 directed the wife to shift in the alternative accommodation provided by the respondent as per Clause 1 of the said order. By Clause 1 of the said order, the respondent-husband was directed to provide 1BHK flat on leave and license basis to the wife.

2. According to the applicant, the wife is occupying the flat which is subject matter of Clause 2 of the impugned order. Therefore, any order passed in the present petition would prejudicially affect his legal rights over the said flat.

3. The subject matter of present petition under Article 227 of the Constitution of India is order dated 8th March 2023 passed on the application below Exhibit-62. The application below Exhibit-62 is filed by the husband seeking relief against the wife to forthwith vacate the flat owned by the applicant to move to alternative accommodation.

4. Since the application was filed by the husband against the wife, the applicant even if claims to be owner of the property, is not necessary party in the writ petition as the subject matter of the petition is the legality and validity of the impugned order. Only the person who has filed application and the person against whom relief is sought are the necessary parties. If any order passed by this Court ultimately affect rights of any person, such person always has right to challenge such order but based on apprehension that order is likely to be passed by this Court which may prejudicially affect his rights is no basis to allow such party to

be added as party. The respondent in the present proceeding as it is for the petitioner to decide whom he wants to make a party.

5. If this Court comes to the conclusion that necessary parties to the petition are not added, the necessary consequence would follow. Hence, the interim application is rejected.

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6. Challenge in this petition is to the order dated 8th March 2023 passed by the Family Court in an application filed by the respondent-husband seeking direction against the petitioner-wife to vacate present flat and move into flat proposed by him.

7. The Family Court allowed the application by passing following order:

“ORDER

1. The respondent husband is directed to provide 1BHK flat on leave and license basis to petitioner wife in the suitable and decent (it means not in SRA and slum) vicinity of Ghatkopar (East) Mumbai within 15 days from the date of this order and produce the copy of leave and license agreement on record. He shall supply one copy of said agreement to petitioner and her advocate by RPAD and email, as early as possible and file the affidavit of compliance of the order on record.

2. The petitioner-wife, within 8 days from the date of receipt of the email and copy of leave and license agreement, shall shift in the alternate accommodation provided by the respondent as per above direction.

3. The respondent (husband) shall pay the amount of

security deposit and rent (every month) to the landlord without fail.”

8. Learned Senior Advocate for the petitioner expressed apprehension that there is possibility of husband committing breach of license conditions or it is possible that lessor may terminate the agreement or on expiry of agreement may call upon the petitioner to vacate the premises. In that case the petitioner will not have any residence.

9. The apprehension expressed on behalf of the petitioner can be taken care of by directing the husband as under:

(i) The husband shall regularly pay license fees/rent as prescribed in the leave and license agreement;

(ii) In case the licensor either orally or in writing communicates petitioner or husband asking them to vacate the alternative flat, in that event, the husband shall see to it that alternative suitable and decent flat as per Clause 1 of the impugned order is provided to the wife before she hands over possession of alternative accommodation provided under Clause 1 of the Order;

(iii) If there is dispute as to whether the flat is suitable and decent as per Clause 1 of the Order, the Family Court shall decide that issue and the decision of the Family Court will be binding on both the parties.

10. The petitioner shall inspect the proposed flat within one week and if she finds that it is not suitable or decent, she will file

appropriate application before the Family Court within one week. The Family Court within one week shall decide whether it is suitable or not and take decision. The decision of the Family Court about suitability of flat shall be binding on the parties.

11. The writ petition stands disposed of.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 21 September 2023 to correct the appearance of the respondent.